

7-1-1992

# Maine Labor Relations Board Annual Report, Fiscal Year 1992

Maine Labor Relations Board

Follow this and additional works at: [http://statedocs.maine.gov/mlrb\\_docs](http://statedocs.maine.gov/mlrb_docs)

---

## Recommended Citation

Maine Labor Relations Board, "Maine Labor Relations Board Annual Report, Fiscal Year 1992" (1992). *Labor Relations Board Documents*. Paper 16.  
[http://statedocs.maine.gov/mlrb\\_docs/16](http://statedocs.maine.gov/mlrb_docs/16)

This Document is brought to you for free and open access by the Labor at Maine State Documents. It has been accepted for inclusion in Labor Relations Board Documents by an authorized administrator of Maine State Documents. For more information, please contact [statedocs@maine.gov](mailto:statedocs@maine.gov).

L15.1:992

C.3

MAINE STATE LIBRARY

ANNUAL REPORT  
MAINE LABOR RELATIONS BOARD  
Fiscal Year 1992

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1).

Introduction

During the past year, the Maine Labor Relations Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, there were substantial fluctuations in the Board's activities compared to the previous year. While there was a continued increase in the number of prohibited practice complaints filed, there was a moderate decrease in representation activity. Continuing a trend noted last year, again there was a decrease in the number of decertification election petitions filed. In the dispute resolution area, there was a modest increase in the number of mediation requests received; however, both the number of fact-finding requests received and the number of fact-finding hearings conducted decreased markedly. Overall, the work load of the Board was comparable to that of FY 1991.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be a primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that did not involve matters over which the Board has jurisdiction, the staff continued its policy of providing some orientation for the inquirer and suggesting other agencies or organizations that might be of help.

The Public Member and Chair, Peter T. Dawson of Hallowell, and Alternate Public Members Pamela D. Chute of Brewer and James D. Libby of Gorham, were reappointed by Governor McKernan on August 23, 1991, and were confirmed by the Senate on October 2, 1991. The other members of the Board continue to be Employee Representative George W. Lambertson of Readfield, Employer Representative Howard Reiche, Jr., of Falmouth, Alternate Employee Representative Wayne W.

C.3

JUL 20 1992

Whitney of Brunswick, Second Alternate Employee Representative Gwendolyn Gatcomb of Winthrop, Alternate Employer Representative Eben B. Marsh of Denmark, and Second Alternate Employer Representative Jim A. McGregor of Coopers Mills.

The sole event affecting the Board's full-time staff this year was that Board Counsel M. Wayne Jacobs, who had been mobilized into active duty with the U.S. Army on December 17, 1990, returned to his position on September 9, 1991.

### Legislative Matters

The most significant development affecting Board operations over the past year was the implementation of a user fee system to fund per diem and necessary expenses incurred in providing Board services. As noted in last year's annual report, a lack of general fund monies resulted in our inability to provide Board services in prohibited practice cases during the fourth quarter of FY 1991. This difficulty was addressed through the budget bill enacted in December 1991, effective January 1, 1992, which created a dedicated revenue account and authorized the collection of user fees to finance the Board's per diem expenses. Initially, collection of user fees resulted in some delay in the delivery of services while waiting for payment to be received. Enactment of Chapter 798 of the Public Laws of 1992, which authorizes collection of the estimated cost of providing per diem services up-front, sets out the circumstances in which services will be provided, and provides a penalty when bills for services are not paid in a timely fashion, should rectify most of the problems which have arisen.

A second cost-cutting measure included in the December 1991 budget bill authorized the Board to conduct mail ballot elections under the Municipal Public Employees Labor Relations Law and the University of Maine System Labor Relations Act. Conducting elections by mail avoids travel costs.

Finally, last year's report indicated that two bills were still on the Appropriations Table at the time the report was prepared. LD 828, which passed, extended bargaining rights to certain employees who work for independent State agencies. LD 8932, which would have set up a task force to review dispute resolution procedures under the four public sector collective bargaining statutes, was not funded. None of the five bills carried over by the Legislature into this fiscal year, and summarized in last year's report, were passed.

### Bargaining Unit and Election Matters

During fiscal year 1992, the Board received 28 voluntary or joint filings for the establishment of or change in collective bargaining units under its jurisdiction. There were 41 filings in FY 91, 53 in FY 90, 31 in FY 89, 24 in FY 88, and 19 in FY 87. Of the 28 FY 92 filings, 13 were for units within educational institutions, 15 within municipal or county government, and none concerned State employees.

Twenty-two (22) unit determination or clarification petitions (filed when there is no agreement on the composition of the bargaining unit) were filed in FY 92; 19 were for determinations, and 3 were for clarifications. Four (4) of the new unit filings actually went to hearing and decision, and 3 are pending. There were 59 unit filings in FY 91 (35 concerning State employees), 36 in FY 90, 21 in FY 89, 30 in FY 88, and 14 in FY 87.

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 92 there were 10 voluntary recognitions filed. Sixteen (16) election requests were filed in FY 92; 13 elections were actually held or are scheduled. In FY 91, there were 7 voluntary recognitions filed, 32 election requests received, and 21 elections held.

In addition to representation election requests, the Board received 2 requests for decertification/certification, which involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. Both requests resulted in elections.

The Board received 2 straight decertification petitions in FY 92. No new union is involved in these petitions; rather the petitioner is simply attempting to remove the incumbent agent. Elections were conducted in both matters.

There were 5 election matters carried over from FY 91. Consequently, there were 21 such matters requiring attention during the fiscal year; this compares with 44 in FY 91, 61 in FY 90, 35 in FY 89, 32 in FY 88, and 36 in FY 87.

## Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

New mediation requests received during fiscal year 1992 rose to 94 from 89 requests received in FY 91, 115 in FY 90, 107 in FY 89, and 91 filings in FY 88. In addition to the new mediation requests received during the fiscal year just ended, there were 26 matters carried over from FY 91 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 120, compared to 158 in the previous fiscal year. The activity in both years is continuing evidence of the sustained level of interest in the mediation process shown by the public sector labor relations community. As recorded in the annual reports for the past few years, it is also a continuing measure of that community's confidence not only in the process of mediation, but in the competence and expertise represented by the membership of the Panel as a whole. The stability of the Panel's activity level this year is particularly significant because, effective January 1, 1992, a user fee was implemented to fund the mediators' per diem and necessary expenses.

The Panel's competence and expertise is reflected in the 74 percent settlement rate achieved for matters resolved through mediation efforts during this fiscal year, including carryovers from FY 91. Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the twelve-month period, we report settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

Fact finding is the second step in the three-step process of statutory dispute resolution. In fiscal year 1992 there were 20 fact-finding requests filed. The 20 requests represent a decrease of approximately 41 percent over the last year. Nine (9) petitions were withdrawn or otherwise settled, 8 requests went to hearing, and 3 petitions are pending hearing. Last year 14 fact-finding hearings were held. The significant decrease in the number of

fact-finding requests filed and hearings conducted may reflect the fact that parties are now paying for mediation services and are less willing to spend additional funds on fact finding. As a result, parties may be working harder at achieving a settlement prior to invoking fact finding.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties only as to non-monetary issues. Issues involving salaries, pensions and insurance are subject to interest arbitration, but an award on these issues is advisory only. In recent years the Board has received few interest arbitration requests, and in FY 92 it received none. Likewise, there were no interest arbitration requests received in FY 91. Although the public statutes require that such arbitration awards be filed with the Board, usually they are not so filed. This year, a single interest arbitration report was received. While it is assumed that this was the only interest arbitration award issued in the public sector during the year, it may be that parties in other cases simply failed to provide proper notification to the Board.

### Prohibited Practices

One of the Board's main responsibilities is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board. Thirty-five (35) complaints were filed in FY 92; this represents a 25 percent increase over FY 91, and it represents a significant increase over the number of filings in the past seven years. During that time, complaints filed have fluctuated from a low of 17 to a high of 28, with the average being 22. This increase in the number of complaints filed, following last year's dramatic increase in filings, indicates the difficulties that parties are encountering in reaching negotiated settlements. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 35 complaints filed in FY 92, there were 16 carryovers from FY 91, compared with 28 complaints and 7 carryovers last year. The Board conducted 7 hearings during the year, compared with 15 in FY 91, and Board members sitting as a single prehearing officer held prehearing conferences in 24

cases, compared with 12 in FY 91. In 8 matters, the Board issued formal Decisions and Orders, with two of those having two decisions each, for a total of 10 written decisions. Four cases are in the process of finalizing stipulations or are in the middle of briefing schedules before Board deliberations can occur. The relatively high number of cases submitted on a stipulated record and through written argument is, in part, a result of the continuation of an initiative introduced last year. Again this year and in appropriate cases, the services of a member of the legal staff have been offered to assist the parties to reach factual stipulations and/or to mediate the dispute. The parties in one case are attempting to stipulate a record, and settlement discussions continue in another. One matter has been deferred pending the resolution of related grievance arbitration proceedings. Five cases have been continued indefinitely at the request of one or both parties and one case has seen no action by the parties for over a year and a half. Such continuances or inactivity usually indicate that the parties are attempting to resolve their differences; however, complaints were filed to preserve the complainants' rights, given the Board's relatively short statute of limitations. Four complaints await hearing and two cases await prehearing. Twenty-two (22) complaints were dismissed or withdrawn at the request of the parties; such requests generally occur when the complaint is related to contract bargaining and after the parties reach agreement on and ratify the contract. Three cases were dismissed by the executive director. One such dismissal was appealed to, and sustained by, the Board.

### Appeals

Three unit determinations by a Board hearing examiner were appealed to the Board and the Board issued formal decisions in two of those cases (the other one settled). Appeals from two Board decisions involving Council 93, AFSCME, AFL-CIO and the State of Maine, one a unit clarification appeal and the other a prohibited practice decision, were argued in the Law Court in early June.

## Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1989</u>	<u>FY 1990</u>	<u>FY 1991</u>	<u>FY 1992</u>
Unit Determination/ Clarification Requests		+114%	-30%	+42%	+72%	-63%
Number filed---	14	30	21	36	59	22
Agreements on Bargaining Unit (MLRB Form #1)		+21%	+29%	+71%	-23%	-32%
Number filed---	19	24	31	53	41	28
Voluntary Recognitions (MLRB Form #3)		+125%	+44%	-7.7%	-42%	+43%
Number filed---	4	9	13	12	7	10
Bargaining Agent Election Requests		+43%	-10%	+156%	-43%	-38%
Number filed---	14	20	18	46	26	16
Decertification Election Requests		-40%	+56%	-43%	-25%	-33%
Number filed---	15	9	14	8	6	4
Mediation Requests		-24%	+19%	+7.5%	-23%	+5.6%
Number filed---	120	91	107	115	89	94
Fact-Finding Requests		-17%	+93%	-45%	+70%	-41%
Number filed---	18	15	29	20	34	20
Prohibited Practice Complaints		-23%	+41%	-21%	+47%	+25%
Number filed---	22	17	24	19	28	35


As the above table indicates, the demand for the Board's services remained stable over the last fiscal year. Continued organizational activity, coupled with a decline in the number of decertification petitions filed, may well indi-

cate that demand for all of the Board's services will increase in the future. In summary, the Board's prohibited practices complaint activity appears to be counter-cyclical in relation to the vitality of the regional economy. As was the case during the economic downturn of the early 1980's, the number of complaints filed seems to increase with the worsening of the economic outlook.

During FY 92, public sector labor-management relations in Maine continued to exhibit the maturity that has been evident over the past few years. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of labor relations is evidenced by the strong demand for mediation services and the willingness of parties to settle prohibited practice cases. In sum, the Board's regulatory and dispute resolution services successfully fostered public sector labor peace during the last fiscal year.

Dated at Augusta, Maine, this 29th day of June, 1992.

Respectfully submitted,

  
\_\_\_\_\_  
Marc P. Ayotte  
Executive Director  
Maine Labor Relations Board